IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI ST. JOSEPH DIVISION

UNITED STATES OF AMERICA,	**) Case No. 13-06010-01/02-CR-SJ-FGJ**
	)
Plaintiff,	**) Kansas City, Missouri**
	) February 13, 2014
v.	**)**
	)
DONNA M. PRESZLER,	**)**
TERRANCE W. PRESZLER,	**)**
	)
Defendants.	**)**
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TRANSCRIPT OF HEARING ON INITIAL APPEARANCES ON SUPERSEDING INDICTMENT AND CHANGE OF PLEAS BEFORE THE HONORABLE ROBERT E. LARSEN UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff:	Jess E. Michaelsen, Esq. Assistant United States Attorney 400 E. Ninth St., Ste. 5510 Kansas City, MO 64106 (816) 426-3122
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Proceedings recorded by electronic sound recording, transcript produced by transcription service.

(Court in Session at 10:02 a.m.)

THE COURT: Good morning.

MR. MICHAELSEN: Good morning.

THE COURT: I have a matter to take up -- well, actually I have several matters to take up this morning. This is in the case of *United States of America vs. Donna M. Preszler and Terrance W. Preszler*. The number of the case is 13-6010-01/02-CR-W -- excuse me, CR-SJ-FJG. Let me get the AUSA's appearance, please.

MR. MICHAELSEN: Your Honor, Jess Michaelsen on behalf of the United States.

THE COURT: And counsel for the defendants, please.

MR. LYNCH: John Lynch on behalf of both defendants, Donna Preszler and Terrance Preszler, Your Honor.

THE COURT: Okay. All right. Now, we've got, as I mentioned, a large number of items to take up here. I'm going to try to go through them in some semblance of order here from the least concerning to the most concerning, ending with the change of plea for each of these defendants. The pleas, I'm going to deal with most of the proceedings here with -- as to both of them jointly. But when we get to the pleas, because that's such a significant step for a defendant, I'm going to take those individually. And, of course, they can both remain in court while we're doing that. But I feel it's important that I address each of them individually when we get to the plea section of this. So, just so that everybody kind of knows where we're going. Let me deal with probably the most basic of the issues we need to address. We have Ms. Preszler already in the system. She was released on bond and at some point we need to do an initial on the Superseding Indictment. But she's already set on bond. So, we have to take up the issue with regard to bond for Terrance Preszler. And I have received a report on Mr. Preszler, which I have seen and I assume the parties have all seen it. Any corrections to that report by the United States?

MR. MICHAELSEN: No, Your Honor.

THE COURT: Have you seen the report, Counsel, and gone through it with your client?

MR. LYNCH: Yes, Your Honor, I have.

THE COURT: Any problems with the report?

MR. LYNCH: No, Your Honor.

THE COURT: Okay. I'm going to follow the recommendation made by Pretrial and set conditions here. They're basic conditions, Mr. Preszler. They include the following: First, that you're not to commit any offense while you're out on bond. Second, you're to advise Pretrial of any change in your address or your phone number within 48 hours. Third, appear at all proceedings as directed by this Court. I'm setting what's called a personal recognizance bond for you. That's just your promise to do everything that I'm telling you to do, and I'm confident you'll do that. There's additional conditions that you submit to the supervision of the Pretrial Service Office, obey all of their instructions and report to them once a week. Also, I'm going to direct that you not have on you or anywhere around you any firearm, destructive device or dangerous weapon. So, if there are any guns in the house, you need to get them out of the house while you're out on this release order. And finally, you're to report to Pretrial 30 minutes before any court proceeding that you're required to attend. I'm going to go ahead and allow counsel to review the penalties and sanctions with Mr. Preszler. If that's acceptable with you, I'll let you do that. And I'm signing the order indicating that he'll be released on those conditions just as soon as that procedure has been completed. I understand that he needs to be processed at some point by the Marshals. So, if you would head down to that office after we get done here, that would be helpful. I'll leave this up for you up here. You can come get it. Now, the next thing I want to cover is this issue with regard to the conflict of interest. We're going to get that out of the way first of all. And I think, and everyone would agree, that given the fact that the posture of the case is where we have both defendants in front of me for a change of plea, it's at least apparent that there doesn't seem to be much of a conflict that could potentially arise in this case given the posture of it. Does the Government agree with that analysis?

MR. MICHAELSEN: The Government is in agreement with that, Your Honor, and we are not opposed to Mr. Lynch representing both defendants at this time.

THE COURT: Okay. And how about you? Are you in agreement with that?

MR. LYNCH: Yes, Your Honor. And I have reviewed in detail with both clients the legal ramification of allowing me to represent both of their interests in this case.

THE COURT: Okay. And I note that we have -- both of them have signed Waivers of Conflict here, and those will -- they have already been filed in the court records, so we have that before me. I do want to address both of these defendants individually though about this issue. And as I mentioned, that we don't think there is a potential conflict here because you're going to go ahead and we anticipate pleading guilty here. But it's important that you understand kind of the right that you have under our Constitution to be represented by separate, independent counsel here. And so -- and the purpose of that is to make sure that when your counsel is dealing with you and dealing with this case, that he or she is devoting his interest exclusively to protecting you and not the co-defendant in this case. So, for example, there could be situations that arise where if we had one lawyer representing two defendants, there could be a conflict that would arise from that relationship. And let me explain to you kind of what it is in general and then I'll give you some examples. In general what it is, is that in performing his function as an attorney, Mr. Lynch would be required to have access to both of you and interview both of you and get your sense about, you know, what the events are here and who's culpable and not culpable and those types of things. In doing that, he might learn information from Mrs. Preszler that would be helpful to Mr. Preszler. But because he has an attorney-client relationship with Ms. Preszler, he's not able to share that with Mr. Preszler. So, that would put him in a conflict where he would have to decide whose best interest does he wish to serve, Ms. Preszler's or Mr. Preszler's. That's the type of situation we're talking about here. And so it kind of splits the lawyer in terms of what he's able to do in representing each of the clients vigorously. And by doing one thing that might help one client, in turn, he would be hurting the other client. So, that's essentially what we're talking about here. It could arise in many instances if this case were going to trial. But it could also arise in this case in which you want to plead guilty. And here is how it would arise. Mr. Lynch might be in a position where he could argue that -- and which I think is perhaps even the situation here -- that Mr. Preszler is not as culpable as Ms. Preszler. And so he's representing though both of you. But in arguing that Ms. Preszler was more culpable and, therefore, Mr. Preszler shouldn't be dealt with more severely, he would be put in a difficult situation because he represents both of you. And that's the kind of situation that will likely occur here. I mean, I think probably there is a distinction between the involvement of each of you in this alleged scheme. So, it's probably something that's going to come up in terms of sentencing, so. But as in all things, or at least most things, you have a right to waive that problem and go ahead and continue with him representing here jointly of both of you if you wish to do that. Now, I hope that I have explained that clearly. But sometimes I don't. So, if you don't understand part of this and you want to ask me some questions about it, you should feel comfortable doing that, because this is an important Sixth Amendment right that you have here. And so if you couldn't afford to get separate, independent counsel, we would take an affidavit from Mr. Preszler, for example. And if he qualified for appointment of counsel, we would bring in a separate, independent lawyer to represent him or he could -- if he had the funds, he could retain his own individual lawyer if he wished to do that. So, first of all, have I explained that adequately to each of you? Ms. Preszler, do you understand what it is I'm talking about?

MS. PRESZLER: Yes, sir. I do understand.

THE COURT: Now, if you don't, let me know. Okay?

MS. PRESZLER: No, I do understand.

THE COURT: Okay.

MS. PRESZLER: Thank you, Judge.

THE COURT: Because I noticed that you looked to counsel, which you should do. But if you don’t think you know what I’m talking about, let me know and I’ll try to go through it again.

MS. PRESZLER: No, we did understand it and John did explain to both of us and I fully understand it and fully agree with having him represent both of us.

THE COURT: Okay. All right.

MS. PRESZLER: Thank you.

THE COURT: So, do you have any questions you want to ask me about it?

MS. PRESZLER: No, sir.

THE COURT: All right. Now, how about you, Mr. Preszler?

MR. PRESZLER: Yes, I’m all right with it, too.

THE COURT: Okay. So, you think you understand the significant constitutional right you’re waiving here by doing this?

MR. PRESZLER: Yes.

THE COURT: Okay. And now do each of you understand, and you may be seated for this. You don’t need to stand. Do each of you understand that if we go forward like this and we do have something that crops up later on, you can’t complain about it at that point. You’re not going to be able to ask the judge or the court of appeals or the Supreme Court to set aside all this business. Do you understand that?

MS. PRESZLER: Yes, sir.

MR. PRESZLER: Uh-huh.

THE COURT: Yeah. Both of you?

MR. PRESZLER: Yes.

THE COURT: Okay. All right. Now, I want to ask you some questions about the voluntariness of the waiver and the knowledgeableness of the waiver. I will assume that each of you thinks that you've had an opportunity adequately to discuss this with your counsel here, unless you indicate that that has not been the case. I will also assume that each of you understands the nature of the waiver here, unless you want to ask me a question. Nobody is indicating they have a question here. Now, Ms. Preszler, with regard to your waiver, has anyone made any threats or promises to get you to do this?

MS. PRESZLER: No, sir.

THE COURT: Is it your voluntary act?

MS. PRESZLER: Yes, sir.

THE COURT: Okay. And do you want me to go ahead and allow you to proceed jointly?

MS. PRESZLER: Yes.

THE COURT: And with regard to your situation, Mr. Preszler, is this a knowing and voluntary act on your part?

MR. PRESZLER: Yes.

THE COURT: And do you want me to go ahead and proceed and allow you to continue to be represented by a single lawyer?

MR. PRESZLER: Yes.

THE COURT: Okay, sir. Then I will, at least at this point, accept it. Does the Government have any additional questioning they want to raise?

MR. MICHAELSEN: No, Your Honor.

THE COURT: And, Counsel, do you have any questioning you want to raise?

MR. LYNCH: No, sir.

THE COURT: Okay. Now, the next thing that we're going to do is I want to go through what's called an initial appearance with you. We have a Superseding Indictment. Ms. Preszler has already been in the system and there was an original Indictment there that she was aware of. But we now have a Superseding Indictment. And, of course, Mr. Preszler has not been in the system until this moment. So, with regard to the Superseding Indictment, Counsel, have you had an opportunity to review it and discuss it with your clients?

MR. LYNCH: Yes, Your Honor. With both clients.

THE COURT: And with regard to the charges here, is there any need for me to go through the charges with either of your clients or do they understand what they are charged with?

MR. LYNCH: Your Honor, I reviewed in significant detail the nature of the charges and they will waive the formal reading.

THE COURT: How about the penalty ranges here? Do you want me to cover those with the defendants?

MR. LYNCH: Congruent with the nature of the charges, Judge, I also reviewed the potential penalties associated with each of the three statutes at issue.

THE COURT: Okay. Then with regard to these charges on the Superseding Indictment and the penalty ranges, I'm not going to read these to you, Ms. Preszler. Is that okay with you?

MS. PRESZLER: Yes, sir. That's okay.

THE COURT: Okay. And with regard to the charges and the penalty ranges, is that okay with you, Mr. Preszler?

MR. PRESZLER: Yes.

THE COURT: Okay. You think you understand what the nature of the charges are here?

MR. PRESZLER: Yes.

THE COURT: Okay. Then we're not going to move forward with any kind of arraignment. I think it's just prudent to move directly into the plea setting unless somebody has got a different take on that. Okay. So, now where we're going to go at this point -- do you want to have a minute to confer?

MS. PRESZLER: No.

THE COURT: No. Okay. I saw you leaning over, so I get concerned. If you want to -- she's probably telling you this judge will never get through this, so, just relax. We'll get to the end here. With regard to the plea proceedings here, this case is currently assigned to one our District Judges, Fernando Gaitan. And so he's asked me to take the pleas here. And I can only do that, because I'm not an Article III judge, if you and the Government consent to it. In other words, you have to agree to have the plea taken by me. And then if so, then the final sentencing would be done by Judge Gaitan. With regard to me taking the plea, any objection by the United States?

MR. MICHAELSEN: No, Your Honor.

THE COURT: And have you had an opportunity to discuss that issue with your clients?

MR. LYNCH: Yes, Your Honor. And we have no objection as well.

THE COURT: Okay. So, I'm going to take the plea here. Is that okay with both of you?

MS. PRESZLER: Yes, sir.

MR. PRESZLER: Yes, sir.

THE COURT: Okay. All right. Good. All right. Now, the first thing I want to do is point out that the pleas are going to be somewhat different here. And I want to take -- deal with Ms. Preszler first, and then we'll deal with Mr. Preszler. So, just give me a minute to get organized. Okay. Now, with regard to Ms. Preszler, as I mentioned, we're going to take you separately from your husband. I want to make sure that we're addressing each of you individually. So, we're going to take you first. And with regard to the charges that you are proceeding with here, they include, as I understand it, Counts Six, Twenty and Twenty-One. Is that everybody's understanding?

MR. MICHAELSEN: Yes, Your Honor.

MR. LYNCH: Yes, Your Honor.

THE COURT: Okay. Now, with regard to those counts, is there any need for me to discuss with you, Ms. Preszler, the underlying charges there and the penalty ranges or do you think you understand them?

MS. PRESZLER: I understand, sir.

THE COURT: Okay. Now, with regard to your rights, I need to tell you about the rights that you're giving up or waiving when you decide you want to plead guilty and they deal with the trial. So, you're giving up a lot of rights here by saying you want to come in and plead guilty. Now, I know counsel has gone through this with you, but I need to make sure you understand these. So, bear with me while we go through it. First of all, you understand that you have a right to have this matter tried before a jury, and there would be 12 members on the jury. And all 12 of them would have to be unanimous in finding either guilt or innocence before they could return to court with a verdict on any of these charges. Do you understand that?

MS. PRESZLER: Yes, sir.

THE COURT: Do you understand that during the course of the trial, you would have the right to be assisted by your counsel, and he would do all the things that a competent, well-prepared lawyer does? He would help you select a jury. He would make an opening statement to the jury about the evidence. He would cross-examine the Government’s witnesses. He’d present whatever evidence you wanted him to present and he’d also argue the case and help the judge formulate appropriate instructions. Do you understand that that would be his function here?

MS. PRESZLER: Yes, sir.

THE COURT: Do you also understand that during the course of the trial, you would be presumed to be innocent of these charges? In other words, the scales of justice would already be tilted in your favor and the Government would have to overcome that presumption of innocence and prove your guilt beyond a reasonable doubt before a jury could return here with a guilty verdict on any of these charges? Do you understand that right?

MS. PRESZLER: Yes, sir.

THE COURT: Do you also understand that during the course of the trial, you have a right to be confronted by the witnesses against you? In other words, the Government would have to produce their witnesses here in open court and your lawyer would get a chance to cross-examine them. Do you understand that right?

MS. PRESZLER: I do, sir.

THE COURT: Do you also understand that during the course of the trial, you would have a right, if you wanted to, to take the stand and testify on your own behalf? Do you know that?

MS. PRESZLER: Yes, sir.

THE COURT: And do you also know that correspondingly you have a right not to testify in the course of this trial, and the judge would instruct the jury that they could not draw any adverse or bad inference about your guilt or innocence simply because you didn't testify? Do you understand that?

MS. PRESZLER: Yes, sir.

THE COURT: Do you understand that during the course of the trial, you would have the right to have witnesses subpoenaed down here under federal court order and testify in this case? Even if they didn't want to come, they'd be forced to come. Do you know that?

MS. PRESZLER: Yes, sir.

THE COURT: Do you also understand that during the course of the trial, frequently criminal defendants take the posture that they don't want to testify, they don't want to call any additional witnesses and they simply want to rely on the presumption of innocence and the high proof of proof beyond a reasonable doubt and argue to the jury that the Government has simply failed to satisfy that burden of proof. And sometimes that results in an acquittal here. Do you understand that you would have a right to do that in this case?

MS. PRESZLER: Yes, I do.

THE COURT: Do you also understand that if there came back a verdict from this jury that was adverse to you, in other words, if there was a guilty verdict on any one of these charges, that would not end the discussion. You would then have a right to take this matter up to the court of appeals. And the transcript of the proceedings down here would be prepared and counsel will get an opportunity to present written arguments to the judges and also oral arguments to the judges in front of them. There would be a panel of three judges who would review all of that, hear all those arguments. And if two of those three judges thought you didn't get a fair shake down here, that case would be reversed and sent back down to our court with a directive that we either try the case again or that we dismiss the charges against you. Do you understand that you have that right?

MS. PRESZLER: Yes, sir.

THE COURT: Now, when you come in here and you tell me that you want to plead guilty to these charges under this plea bargain arrangement, do you understand that you're giving up all of these significant constitutional and other rights, and the only thing that's going to happen is there will be a sentencing at some point. Do you know that?

MS. PRESZLER: Yes, sir.

THE COURT: Now, with regard to the factual basis here, at some point in these proceedings, I'm going to place you under oath and ask you questions why it is you think you are guilty of these charges. Not why you think you're innocent of them, but why you think you're guilty of them. And the purpose of that is to make sure that you don't come in here and plead guilty and actually think you're innocent, because we don't want to have people do that. We'd prefer to have them actually concede that they are guilty. And if so, then, you know, we'll accept the guilty plea. So, you'll be under oath and you're required, obviously, to testify truthfully. And you'll do that, correct?

MS. PRESZLER: Yes, sir.

THE COURT: Okay. Now, with regard to the disclosures here, the Government has made this a voluntary disclosure case?

MR. MICHAELSEN: That's correct, Your Honor.

THE COURT: Is there anything that you've not disclosed to counsel with regard to Ms. Preszler?

MR. MICHAELSEN: No, not at this time, Your Honor.

THE COURT: Okay. And with regard to this situation, is it your believe that this is in the best interest of justice to go forward with this Plea Bargain?

MR. MICHAELSEN: Yes, Your Honor.

THE COURT: All right. Now, concerning that file, Counsel, you've seen it and reviewed it with your client?

MR. LYNCH: I have, Your Honor.

THE COURT: And you believe that under these circumstances, it's in her best interest to go ahead and plead guilty under this agreement?

MR. LYNCH: I do, Your Honor.

THE COURT: Okay. With regard to the factual basis, I'd ask you at this point to stand and raise your right hand so I can place you under oath.

DONNA M. PRESZLER, DEFENDANT, SWORN

THE COURT: Okay. Now, you may be seated. I'm going to ask the Government, if you would, would you lay out -- I know that there's a lengthy statement in each of these Plea Bargain Agreements. But would you outline for us here on the record essentially what the evidence would be as to Ms. Preszler?

MR. MICHAELSEN: Yes, Your Honor. The evidence to support the factual basis contained in Paragraph 3 of the party's Plea Agreement would consist primarily of witness statements. Those being statements from the victims in this case, from Burdg, Dunham & Associates. Also consists of other statements and also statements of the defendants themselves, in particular statements from Ms. Preszler with -- as it pertains to her. The evidence would also consist of substantial voluminous bank records in this case, summaries of bank records, as well as summaries of payroll records and financial records from the victims in this case, Burdg, Dunham & Associates. As to the tax portion of the case, also there would be a substantial -- there would be an amount of tax returns and tax records as well. Your Honor, there were no search warrants in this case. There was a seizure warrant but it was related to asset forfeiture and seizure of assets, not an evidentiary seizure in this matter. And that would be the basis to support the evidence as it is outlined in Paragraph 3.

THE COURT: Okay. And Count -- let's go through each of them, if we can here. In Count Six, there is some introductory language on page 3 that talks about the period of time between June 30th of 2006, and June 15th of 2012, saying that Ms. Preszler executed a scheme or artifice to defraud, to obtain money and credits and property owned and in the custody of BDA by means of material false and fraudulent pretenses, representations, and promises. Can you describe for me essentially what that scheme was?

MR. MICHAELSEN: Yes, Your Honor. Ms. Preszler was employed as an account manager at the Burdg, Dunham & Associates. Through her employment she was able to set up direct deposits to her personal bank accounts that she had and held jointly with her husband and with others. As a result of those direct deposits that were made as part of her payroll direct deposits, and they were included under a column as essentially as an expense reimbursement and not as actual pay, therefore, there were no taxes withheld from that amount. Throughout the scheme when it began, the amounts increased. And Ms. Preszler towards the end was -- towards the end in that manner of the scheme, she took approximately $3.9 million from Burdg, Dunham & Associates in that manner. And in particular for Count Six, that pertains to one of the weekly ACH payroll transfers, direct deposits to her accounts that occurred on June 13th of 2012. And at that time the amount of that fraudulent non-taxable pay or expense reimbursement was $35,000. These transfers were set up via ACH, download files which caused them to be uploaded to the Internet and resulted in a wire transfer of the uploads of these payroll download files.

THE COURT: Okay. And with regard to that description, Counsel, do you agree that the Government's description here would comport with the evidence you've seen in their file?

MR. LYNCH: Yes, Your Honor. I think the Government was accurate with respect to its articulation of the facts and circumstances of the case.

THE COURT: Okay. So now, Ms. Preszler, with regard to that count, it alleges, starting page 4, and if you've got a copy of there, you can follow along. On or about the dates listed below, for the specific counts in the Western District of Missouri, you, for the purpose of executing this alleged scheme and artifice to defraud and to obtain money and property, did knowingly cause to be transmitted in interstate commerce by means of wire communication certain signals, that is, weekly ACH payroll data files sent via wire transfers on the Internet from BDA in Hamilton, Missouri, to FreedomWare, LLC's computer servers in New York, to initiate and process false and fictitious weekly ACH payments from BDA's bank accounts to Defendant Donna M. Preszler's personal bank accounts and others, on or about the dates listed below, in the amounts listed in each specific count. And then on Count Six, it's got it listed at June 13th of 2012, the amount that was fraudulent and non-taxable pay was alleged to be $35,000. First of all, do you understand what it is you're charged with in that count? Do you understand what it is you're charged with that count?

MS. PRESZLER: Yes, I do, sir.

THE COURT: And with regard to those factual allegations here made by the prosecutor and by -- and concurred in by your counsel, do you agree that the evidence would be established so that you could be found guilty of that charge?

MS. PRESZLER: Yes, I do.

THE COURT: And with regard to that charge, do you think you're actually guilty of it?

MS. PRESZLER: Yes, I do.

THE COURT: Okay. So, you concur with the fact that you developed this fraud scheme, correct?

MS. PRESZLER: Yes.

THE COURT: And during the course of that period of time, you caused to be transported or transmitted in interstate commerce by wire on June 13th of 2012, the amount of $35,000, right?

MS. PRESZLER: Yes, sir.

THE COURT: And at the time you did that, you did it knowingly, right?

MS. PRESZLER: Yes, sir.

THE COURT: Right?

MS. PRESZLER: Yes, sir.

THE COURT: And you did it intentionally, right?

MS. PRESZLER: Yes, sir.

THE COURT: And you knew that this was, you know, although you might not have known this exact statute, you knew what you were doing was probably illegal, right?

MS. PRESZLER: That's correct, sir.

THE COURT: Okay. So, you think you're guilty on that count?

MS. PRESZLER: Yes, sir.

THE COURT: All right. Now, let's move on to the second count, which is the Count Twenty, which is a little bit different. And there it says that on or about the dates listed below, for the specific counts, in the Western District of Missouri, Defendant Donna M. Preszler, knowingly engaged and attempted to be engaged in a monetary transaction, in or affecting interstate commerce or in criminally derived property of a value of more than $10,000 with the funds represented by the transactions having been derived from specific -- specified, rather, unlawful activity, that is, wire fraud, as alleged in the earlier counts. And Defendant Donna M. Preszler knew the monetary transaction involved proceeds of a criminal offense, and so knowing she caused the following monetary transactions to take place as described below in each specific count. Now, we're here talking about Count Twenty, which is alleged to be a date of a check on June 22nd of 2012. And the amount of the check is alleged to be $148,389.14. And the transaction is described as Citizens Bank & Trust cashier's check number 200860 payable to Chillicothe State Bank, Loan Number 512. Now, with regard to that count, are you aware of what that count charges here? Basically it's a monetary transaction that they're alleging here.

MS. PRESZLER: Yes, sir.

THE COURT: And with regard to that count, is it true that on June 22nd of 2012, that you caused that transaction to occur in a sum of roughly about $148,000?

MS. PRESZLER: Yes, sir.

THE COURT: And when you did that, did you do it knowingly?

MS. PRESZLER: Yes, sir.

THE COURT: And did you do it intentionally?

MS. PRESZLER: Yes, sir.

THE COURT: And did you believe at the time that that was against the law in some form or fashion?

MS. PRESZLER: Yes, sir.

THE COURT: Okay. Now, you're kind of hesitating there. And I get uncomfortable when people do that. But do you think you're actually guilty of this count?

MS. PRESZLER: Yes, sir, I am.

THE COURT: Okay. Now, let's move on to the third one. I know you're -- this is tough stuff but just bear with me. I've got to go through it with you. So, the final one is Count Twenty-One. And that's a charge that alleges that for the tax years 2007 through 2012, that you and your husband, Terrance, filed their federal income tax returns jointly as husband and wife. And during those years, you and Terrance failed to report the fraudulently obtained funds from BDA on your federal income tax returns submitted to the IRS for each of the following years. And so with regard to that count, it continues to allege that on or about February 19th of 2013, in this district, both of you being residents of Chillicothe and married, did willfully make and subscribe and file with the Internal Revenue Service a Form 1040, that's the Individual Income Tax Return, for the year 2012, which was verified by written declaration that it was made under the penalty of perjury and was filed with the Director of IRS at the center here in Kansas City, Missouri, which return the defendants then and there knew was not true and correct as to every material matter, in that the defendants then and there knew and believed that the return materially understated the income obtained by the defendants through embezzlement from Ms. Preszler's employer. In particular, the defendants represented for 2012 their income was only $46,863.00, whereas, the defendants then and there knew and believed their total income, including the embezzled funds, was actually $851,863.00. Do you understand what you're charged with there in that count?

MS. PRESZLER: Yes, sir.

THE COURT: Okay. And with regard to that count, do you think you're guilty of that count?

MS. PRESZLER: Yes, sir.

THE COURT: And when you did that and you filed that income tax return, you did it knowingly, correct?

MS. PRESZLER: Yes, sir.

THE COURT: And you did it intentionally, right?

MS. PRESZLER: Yes, sir.

THE COURT: And you knew that it was an error or legal mistake to do that, right?

MS. PRESZLER: Yes, sir.

THE COURT: So, do you think you're actually guilty of that count?

MS. PRESZLER: Yes, sir.

THE COURT: Okay. Now, you may be seated. Do you need a minute?

MS. PRESZLER: No, sir.

THE COURT: Okay. We're done with the hard stuff, so just take a deep breath. Do you need some water or something?

MS. PRESZLER: No, thank you.

THE COURT: Okay. We can get you some if you do. All right. Now, the rest of it is fairly simple here. So, let me go through that. With regard to the Plea Agreement, Ms. Preszler, have you had an adequate opportunity to review this document, all 21 pages of it, with your counsel?

MS. PRESZLER: Yes, sir.

THE COURT: Is there anything in the document that you don't understand?

MS. PRESZLER: No, sir.

THE COURT: And with regard to that document, I'm going to go through it with you just kind of briefly to make sure that you really do understand the provisions of it. That's not a reflection on you or your counsel, it's just the way I do things.

MS. PRESZLER: Okay.

THE COURT: So, bear with me, okay?

MS. PRESZLER: Thank you.

THE COURT: Okay. Now, the first part of it, page 1, I'm going to hear -- here is what I'm going to do. I'm going to refer to the page number and then the paragraph on that page. Okay?

MS. PRESZLER: Yes.

THE COURT: The first page, Paragraph 1, it talks about the parties. This binds only the United States Attorney for the Western District of Missouri and you. That's all the people that are associated with this Plea Agreement. It doesn't bind anyone else, any other prosecutors. Do you understand that?

MS. PRESZLER: Yes.

THE COURT: At Paragraph 2 there's a statement concerning the guilty plea, and we've talked about that and you're going to plead guilty to Six and Twenty and Twenty-One, and we went through that with you. Then if you go to page 3, it begins at Paragraph -- excuse me, page 2, it begins at Paragraph 3, the factual basis for the guilty plea. And that goes on all the way over to page 6. Now, have you read that?

MS. PRESZLER: Yes, sir.

THE COURT: And do you agree with the information in that section of the Plea Agreement?

MS. PRESZLER: Yes, sir.

THE COURT: Okay. Then if you would, the next part of it is at page 7, Paragraph 5. This is the statutory penalties here. And we've referred to those, we haven't gone through them. But have you read that and you understand the penalty ranges here you face on each of these counts?

MS. PRESZLER: Yes, sir.

THE COURT: Okay. Now, go over to page 8. This is the sentencing procedures. This is how the judge will impose sentencing here. And here is what I want to do. I want to focus just on (g) and some of the sections that follow that, because there is a forfeiture count here. And the Government is seeking to forfeit an amount of money that related to all of this. And you understand that, correct?

MS. PRESZLER: Yes, sir.

THE COURT: Okay. So, with regard to that, it says that the court is not bound by any recommendation regarding sentencing to be imposed or the calculation of the Sentencing Guidelines.

So, first of all, the judge has to make a decision on his own about what's a legal sentence in this case. What the parties have thought that the, you know, agree that should happen here is not binding on Judge Gaitan. Do you understand that?

MS. PRESZLER: Yes, sir.

THE COURT: Now, we've got good lawyers here, so we're not anticipating any problems. But it's important you understand that that's his responsibility to arrive at whatever would be an appropriate legal sentence. Do you understand that?

MS. PRESZLER: I do understand.

THE COURT: Okay. Then under (g), it says you can't withdraw your guilty plea because you don't like the nature of the sentence that you get from the judge. Under (I), it says that you agree that the United States may institute civil, judicial or administrative forfeiture proceedings against all forfeitable assets. And it then talks about how you agree to forfeit your interest you own or over which you exercise control of any assets subject to forfeiture. And it goes on in (k) to talk about providing information about the existence and location of those, under (l), about taking necessary steps to help in the forfeiture effort. And in the event that federal, state or local law enforcement agencies having custody of the property decide not to pursue the forfeiture of the property due to minimal value, the defendant hereby abandons any interest you have in such property and talks about within ten days of execution of this agreement, that you agree to execute and submit information to the Government concerning these issues. So, I kind of want to make sure you understand that that's part of this deal, too, the forfeiture aspect.

MS. PRESZLER: Yes, sir, I do.

THE COURT: Okay. Now, if you go over to page 10, it talks about the Government's agreements. Here is what they're doing in response to your promises. They're saying they're not going to bring any additional charges against you arising out of this investigation and they're agreeing to recommend that the court order that the sentences imposed on Counts Six, Twenty and Twenty-One run concurrently, that means together. So, the judge is going to get a recommendation that they not be added one to the other. Do you understand all of that?

MS. PRESZLER: Yes, sir.

THE COURT: In addition, the United States agrees to dismiss the remaining counts of the Indictment as they apply to you. Do you understand what that means?

MS. PRESZLER: Yes, sir.

THE COURT: All right. Now, just to make sure, if you would, I want you to go to page 12. Here we talk about the Sentencing Guidelines. Have you discussed those with your counsel?

MS. PRESZLER: Yes.

THE COURT: You've got a general idea of what they mean?

MS. PRESZLER: Yes.

THE COURT: It's almost like filling out your tax return, not to get taxes back into it. But it's kind of like that.

MS. PRESZLER: Yes, sir.

THE COURT: You figure out what a person's criminal history is and then the seriousness of the offense and then the judge gets a range of months that, you know, he or she can impose. So, with regard to that section, the guidelines are simply advisory. In other words, most of our judges follow them. But, you know, they don't necessarily have to as long as they impose a legal sentence obviously. With regard to this situation, we've got agreement here that the applicable guidelines range for the offenses is set out there, and I'm not going to cover those. Then it says that you're going to be subject to a two-level enhancement for abuse of position. That means they're adding two points onto your guidelines calculation, which is not in your interest. That hurts you. The applicable guidelines for Twenty-One is set out there. And then they agree that you're subject to a two-level enhancement for failing to report and correctly identify the source of your income exceeding $10,000. Again, that's not good stuff. But they're agreeing that it's subject to a two-level enhancement or adjustment. And then it says that you're admitting your guilt at (I) on page 13. You're admitting your guilt and, therefore, you're going to get a two-level reduction -- a three-level reduction, which is helpful to you. And then it says on (j) that the judge is going to determine your criminal history, which we don't think there's anything there anyway. But do you at least understand generally what all that stuff is about?

MS. PRESZLER: Yes, I do.

THE COURT: Do you want to ask me any questions about it?

MS. PRESZLER: No, thank you.

THE COURT: Good. All right. I think that's it. I need to ask you with regard then to the Plea Agreement, is everything you've been told and promised contained with the 21 pages of this agreement?

MS. PRESZLER: Yes, sir.

THE COURT: Has anyone made any other promises to you?

MS. PRESZLER: No, sir.

THE COURT: Has anyone made any threats to get you to come in here and plead guilty under this agreement?

MS. PRESZLER: No, sir.

THE COURT: Is it your free and voluntary act in every sense of those words?

MS. PRESZLER: Yes, sir.

THE COURT: And with regard to your counsel here, have you been satisfied with his performance?

MS. PRESZLER: Very much so.

THE COURT: Has he done anything that you haven’t wanted him to do?

MS. PRESZLER: No.

THE COURT: Has he failed to do something that you’ve asked him to do?

MS. PRESZLER: No.

THE COURT: Tell me your age.

MS. PRESZLER: My age is 60.

THE COURT: And how far have you gone in school?

MS. PRESZLER: Twelfth grade.

THE COURT: Okay. And with regard to reading and writing and understanding English, have you had any difficulty doing that?

MS. PRESZLER: No, sir.

THE COURT: Do you have any physical or mental health issues that would affect your ability to make a smart decision today about pleading guilty?

MS. PRESZLER: I don’t believe so, sir.

THE COURT: Okay. Well, if you do, tell me about them.

MS. PRESZLER: No, I don’t.

THE COURT: No. You’re not -- you don’t have any kind of -- sometimes we have folks come in here who are suffering from pain and have excruciating pain and that might affect their ability to plead guilty. Sometimes they come in here and they have bipolar disorder or something like that. So, I need to know those things. Anything along those lines?

MS. PRESZLER: No.

THE COURT: Anything about substances, alcohol, drugs, anything like that that you're on today that would affect your ability to plead guilty?

MS. PRESZLER: No, sir.

THE COURT: Okay. And with regard then to the plea here, before I turn to your lawyer and I ask for the final pleas of guilty here, I want to give you an opportunity to raise any concerns that you might have about anything that hasn't been discussed. If you are concerned about something that nobody has touched upon and nobody has answered this question or you've got a complaint about something, now is the chance to do it before you plead guilty. So, if you want to raise something, I'm happy to hear about it.

MS. PRESZLER: I don't have anything, sir.

THE COURT: Okay. Then at this --

MS. PRESZLER: John has taken very good care of me.

THE COURT: I'm sure he has. I'm sure he has. At this point then, Counsel, what are the pleas to these three counts?

MR. LYNCH: Ms. Preszler will enter pleas of guilty to all three counts, Your Honor.

THE COURT: Your pleas at this point are guilty to these three charges, is that correct?

MS. PRESZLER: That is correct, sir.

THE COURT: We'll go ahead and enter those pleas into the record here at our court, and I'll order a Presentence Investigation. And what'll happen at this point is Probation will get a report prepared. You'll get a chance to see it, and if there's anything in it that's incorrect, you'll get a chance to raise those and then there will be a sentencing so that's kind of where you're going. Okay. Now, with regard to Mr. Preszler, I'd like to maybe take --

MR. MICHAELSEN: Your Honor?

THE COURT: Go ahead.

MR. MICHAELSEN: If I may just for the record, --

THE COURT: Yeah. Yeah. Go ahead. Please.

MR. MICHAELSEN: -- I want to point out two other provisions of the Plea Agreement for dealing with Ms. Preszler's Plea Agreement.

THE COURT: Please. Just one second.

MR. MICHAELSEN: Also in the parties' Plea Agreement on Paragraph 15, there is, and I think the Court briefly covered this with her with respect to her general rights. But in particular, under Paragraph 15, she's waived her right, her appellate rights and post-conviction rights. Under subparagraph (a), she expressly acknowledges and understands and agrees that by pleading guilty pursuant to the Plea Agreement, she waives her right to appeal or collaterally attack a finding of guilt following the acceptance of the Plea Agreement, except on grounds of ineffective assistance of counsel or prosecutorial misconduct. And then on subparagraph (b), the defendant expressly waives her right to appeal her sentence, directly or collaterally on any ground except either ineffective assistance of counsel, prosecutorial misconduct or an illegal sentence. And then I also just wanted to note for the Court as well that under Paragraph 16, the defendant has agreed to the restitution order in this case which the court will order at the time of sentencing in the amount of $3,912,000 to the victim in this case, Burdg, Dunham & Associates Construction Corporation as well as $1,236,690 to the IRS as part of the tax case in this case, Your Honor. And I would also note just for the record that the victims in this case are present in the courtroom here today.

THE COURT: Okay. All right. So, with regard to those provisions, are you aware of those, Ms. Preszler?

MS. PRESZLER: Yes, sir.

THE COURT: And so any questions about that?

MS. PRESZLER: No, sir.

THE COURT: Okay. Any additional examination by the United States?

MR. MICHAELSEN: No, Your Honor.

THE COURT: Anything that defense counsel wants to raise?

MR. LYNCH: No, Your Honor.

THE COURT: Okay. Let’s do this. We’ve been going through a marathon here and I know everybody is tired of listening to me. So, we'll take five minutes and then come back and we'll do Mr. Preszler. Okay. All right.

(Court in Recess from 10:51 a.m. until 11:01 a.m.)

THE COURT: Okay. Be seated. Okay. Now, we're back on the record in the case involving Mr. and Mrs. Preszler. We've completed the change of plea for Ms. Preszler. We're going to move now into the plea proceeding as to Terrance W. Preszler. And this is a more easily handled plea because we're talking about just one count, Count Twenty-One, plus the forfeiture count as a I understand it. Anybody have a different take on that? I don't think so. With regard to the proceedings, Mr. Preszler, I'm going to cover the same information essentially that I covered with your wife. You were here for that proceeding. And so much of the explanation that I gave to your wife, I assume that you heard.

MR. PRESZLER: Yes, sir.

THE COURT: And so I may not repeat all of that. But if there are any questions that you have, I want you to feel very comfortable in asking me about it. Okay?

MR. PRESZLER: Okay.

THE COURT: So, I'm going to go through the same drill with you. And the reason for that is this is an important proceeding and it's important you understand exactly what your rights are. So, bear with me as we cover much of the same information we covered with your wife. First of all, we're talking here about Count Twenty-One and the forfeiture count. And let's just kind of look at those for purposes of the proceeding here. This is the tax case, the false income tax return case. Do you have that in front of you by chance?

MR. PRESZLER: Yes, I do.

THE COURT: It's at page 6. And there it alleges that sometime for the years 2007 to 2012, you and your wife filed income tax returns jointly as husband and wife. And during those years it alleges that you and your wife failed to report the fraudulently obtained funds from BDA on your federal income tax returns submitted to the IRS for each year. And then it goes on to address the year for 2012. And it says that on or about February 19th of 2013, in this district, you and your wife, residents of Chillicothe, who were married during the calendar year 2012, did willfully make, subscribe and file with the IRS, a Form 1040, Income Tax Return for the year 2012, which was verified by written declaration that it was made under the penalties of perjury and was filed with the Director, Internal Revenue Service Center, at Kansas City, Missouri, which return the defendants then and there knew was not true and correct as to every material matter, in that the defendants then and there well knew and believed that the return materially understated the income obtained by Donna Preszler through embezzlement from her employer, in particular the defendants represented for 2012 their total income was only $46,863, whereas, as you then knew and believed your total income, including the embezzled funds, was actually greater, $851,863, in violation of the Federal Tax Code. Do you understand what it is you're charged with in that count?

MR. PRESZLER: Yes, sir.

THE COURT: And with regard -- you can remain seated. You don't need to stand up for this. If you go back to the front page of that document over here on the right-hand side, it covers Count Twenty-One. This is what the statutory penalty is or the worst-case scenario for anybody who pleads guilty to this type of a charge. And here the penalty range is not more than three years in prison, a fine of not more than $100,000, supervised release of not more than one year and a $100 mandatory special assessment, also the potential for restitution to the alleged victims or victim here and also the potential also included in this Plea Agreement is the forfeiture allegation, which apparently you've agreed to concede to as well. Do you understand the nature of the charge here including the forfeiture penalty?

MR. PRESZLER: Yes, sir.

THE COURT: And the penalty ranges otherwise, you understand those?

MR. PRESZLER: Yes.

THE COURT: Okay. Now, much as I did with your wife, I'm going to cover the same rights that you're giving up here.

You know, we would set this case for trial and that's what we do around here is we try cases. So, the case would be set for trial. But by coming in here today, you're telling me that you want to plead guilty under this plea bargain arrangement. With regard to the rights that you have, you know that you have the right to have this case tried by a jury, and there would be 12 members of the jury and they would have to be unanimous in their verdict. Do you know that?

MR. PRESZLER: Yes, sir.

THE COURT: Do you know that you would have the right to be assisted by your counsel here at every stage of those proceedings, everything from the selection of the jury, to the final instructions by the judge. He would help the judge and conduct his examination of the Government's witnesses and the presentation of any evidence you wanted the jury to hear. Do you understand that that would be the nature of his role?

MR. PRESZLER: Yes, sir.

THE COURT: Do you also understand, again as I told your wife, that you're presumed to be innocent? And that's a pretty big deal around here. In other words, the jury is told that they have to assume that you're already not guilty. And the Government has to overcome that presumption and prove your guilt beyond a reasonable doubt, which is the highest standard of proof required in any proceeding in any court of the United States. Do you understand that?

MR. PRESZLER: Yes, sir.

THE COURT: Do you understand that you would have a right to be confronted by the witnesses against you here in court? In other words, the Government couldn't just call an agent to testify here, we'd have to have the witnesses who perceived these activities or could testify about these about activities. Do you know that?

MR. PRESZLER: Yes, sir.

THE COURT: And do you also know that during the course of the trial, you would have the right to testify if you wanted to testify in this case? Do you know that?

MR. PRESZLER: Yes, sir.

THE COURT: And you also know that you would also have the right, as I mentioned to your wife, not to testify and that the jury could not draw any adverse or bad inference because you didn't take the stand and present your side of the case. You know that?

MR. PRESZLER: Yes, sir.

THE COURT: You also know that you would have the right to have witnesses subpoenaed down here under federal court order to testify. And we would issue those orders and get those folks down here if you wanted them here. Do you understand that?

MR. PRESZLER: Yes, sir.

THE COURT: And also as I explained to your wife, you also would have a right, and frequently occurs, not to testify and not to present any evidence and just stand on the presumption of innocence and the proof beyond a reasonable doubt. And sometimes that results in an acquittal in these cases. Do you understand that?

MR. PRESZLER: Yes, sir.

THE COURT: Do you also understand that you would also have a right to have your matter reviewed by the court of appeals? There's a three judge panel who would draw this case and they would order the lawyers to submit the transcript of what they wanted the judges to read of what happened down here at the trial. And your lawyer and Government counsel would file written briefs about those issues and they would go up there, either here in Kansas City or St. Louis or Minnesota and argue in front of that panel that in your case why it is that conviction should be set aside. Do you understand you have that right?

MR. PRESZLER: Yes, sir.

THE COURT: And now you understand that when you come in here and you tell me you want to plead guilty, you're giving up all of these rights. And the only thing we're going to do is then move to a sentencing at some point. You know that?

MR. PRESZLER: Yes, sir.

THE COURT: Right. Okay. Now, with regard to the proceedings, as I told your wife, I'm going to place you under oath. And you'll tell me the truth about this, why you think you're actually guilty, right?

MR. PRESZLER: Yes, sir.

THE COURT: All right. Now, the file here, we've gone through that with Government counsel. It's been essentially an open file case by the Government. The Government has disclosed everything in Mr. Preszler's case, correct?

MR. MICHAELSEN: Yes, Your Honor. It's been voluntary disclosure by the Government.

THE COURT: Right. And, so, with that information, you've reviewed that with your client, correct?

MR. LYNCH: I have, Your Honor.

THE COURT: And you think this is a smart decision for him to make under these circumstances?

MR. LYNCH: Yes, Your Honor.

THE COURT: Okay. And with regard to the factual basis here, will the Government lay out what the factual basis -- I know it's also in the plea bargain, but would you lay out for me what the underlying factual basis would be here for this conviction?

MR. MICHAELSEN: Yes, Your Honor. Essentially the evidence in this case to support the factual allegations contained under Paragraph 3 of the parties' Plea Agreement would consist of witness statements in this case, including statements that the defendant himself, that he made, voluminous bank records, the income tax returns filed on behalf of Mr. and Mrs. Preszler, also as well as voluminous or summaries of voluminous bank records and financial records, also records of the victim company, Burdg, Dunham & Associates, that support the amount of the embezzlement income that was failed to be reported on the income tax returns. A little more specifically in this case, Your Honor, in approximately June of 2012, when the fraudulent embezzlement scheme came to light, Ms. Preszler was interviewed at her residence by Special Agent Kurt Lipanovich with the FBI, at which time Ms. Preszler admitted her crimes and admitted her embezzlement of a substantial amount of money. That all occurred in front of Mr. Preszler at that time. And additionally, around that same time in June of 2012, the victims in that case fired Ms. Preszler from her job and also instituted a civil lawsuit against both the Preszlers and their various family members for the amount of -- to recover the amount of money that has been stolen and taken from them. That occurred in June of 2012. Then the income tax return in support of the count under Count Twenty-One in this case was actually filed by the Preszlers in February of 2013 for their 2012 return at which time they reported the adjusted gross income of $46,863, and actually reported and requested a refund in the amount of $3,132. At that time, all full well and knowing that the embezzlement had occurred for that 2012 and that none of that income was reported --

THE COURT: Right.

MR. MICHAELSEN: -- on the 2012 tax return.

THE COURT: Right. Right. So, you agree with what the

Government has said here with regard to the file and their evidence, correct, counsel?

MR. LYNCH: Yes, Your Honor.

THE COURT: Yeah. And with regard to that, do you agree that the Government could produce that evidence at trial, Mr. Preszler?

MR. PRESZLER: Yes.

THE COURT: With regard to your factual basis, I ask you at this point to stand and raise your right hand, sir.

TERRANCE W. PRESZLER, DEFENDANT, SWORN

THE COURT: You may be seated, sir. Now, let's go through the count here. It alleges for the tax year, February -- well, excuse me. It alleges that on or about February 19th of 2013, in this district, you and your wife were residents of Chillicothe in Missouri and were married at that time, correct?

MR. PRESZLER: Yes.

THE COURT: And during the calendar year of 2012 you were also married, correct?

MR. PRESZLER: Yes, sir.

THE COURT: And you also made a 1040 return during that period for the calendar year 2012, correct?

MR. PRESZLER: Yes, sir.

THE COURT: And in that filing that you submitted to the IRS, you knew at that point that you had income far greater than $46,863, correct?

MR. PRESZLER: Yes, sir.

THE COURT: And when you submitted that report to the IRS reflecting the $46,863, you knew that that was incorrect and there were these embezzled funds. Did you know approximately how much that was or not?

MR. PRESZLER: Yes, sir.

THE COURT: You knew it was substantial?

MR. PRESZLER: Yes.

THE COURT: You might not have known the actual dollar figure, but you knew that it was a lot of money?

MR. PRESZLER: Yes, sir.

THE COURT: Yeah. And so when you submitted the return to the IRS with this information that was false, did you do that knowingly?

MR. PRESZLER: Yes, sir.

THE COURT: Did you do it intentionally?

MR. PRESZLER: Yes, sir.

THE COURT: And do you think you're actually guilty of this charge?

MR. PRESZLER: Yes, sir.

THE COURT: Okay. Now, with regard to the plea bargain arrangement here, have you gone through this 19-page document and talked about it with your counsel?

MR. PRESZLER: Yes, sir.

THE COURT: Now, many of the provisions here are the same as your wife's. There are a few different parts to it. But I'm not going to cover everything as I did with her unless you think you don't understand it that well. Do you understand it?

MR. PRESZLER: Yes, sir.

THE COURT: Okay. I'm going to skip over some of the stuff that just deals with the same information I discussed with your wife and move directly to the ones that deal more specifically with you. So, there's a factual basis in your case as well. It's contained on pages 2 through 6 of the Plea Bargain Agreement. Have you read that?

MR. PRESZLER: Yes, I have.

THE COURT: And is the information in there true?

MR. PRESZLER: Yes, sir.

THE COURT: And so you would agree that the Government could produce that information at trial, right?

MR. PRESZLER: Yes, sir.

THE COURT: Right?

MR. PRESZLER: Yeah.

THE COURT: Okay. And with regard to the forfeiture provision at 5, it says that you agree that the property described in the Forfeiture Allegation of the Superseding Indictment in the amount of $3,912,000, the listed property, the listed personal property and all the funds seized from the listed bank accounts and Funeral Trust Accounts is property that is subject to forfeiture by the United States. Do you agree with all that?

MR. PRESZLER: Yes, sir.

THE COURT: And then it's got the penalties there at Paragraph 5 at page 6. And here you face a sentence of not more than three years in prison, a $100,000 fine, supervised release of one year and restitution, plus a $100 special assessment. The same forfeiture provisions that we discussed about cooperating with the Government with your wife, those also apply to you. Do you understand that?

MR. PRESZLER: Yes, sir.

THE COURT: Then we've got at page 9 the Government's agreements. Here they're agreeing that they're not going to bring any additional charges against you for any of the offenses reflected in this investigation. Do you understand that?

MR. PRESZLER: Yes, sir.

THE COURT: Now, go over to page 11. We're talking about the guidelines again. Do you think you generally understand what this is all about?

MR. PRESZLER: Yes, sir.

THE COURT: Okay. And so here at Paragraph 10, they say that the parties agree that there is -- at subparagraph (c), the parties agree that there's a two-level enhancement that's applicable here to fail to report and correctly identify a source of income exceeding $10,000. So there, again, that's bumping you up two points. And then it says at (d), that you've admitted your guilt so you're going to get a three-level reduction. That's good for you. So, that's reducing it. And then at (e), it says that the criminal history, if any, will be determined by our District Court Judge in this case. Do you understand what all that's about?

MR. PRESZLER: Yes, sir.

THE COURT: Okay. Now, I know that Government counsel wants me to cover some additional ones. So, if you'd point them out to me, I'll go ahead and do that.

MR. MICHAELSEN: It's primarily Paragraph 15, the appellate waiver, Your Honor.

THE COURT: Okay. Mr. Michaelsen points out that we've got at page 14, Paragraph 15, which is the appellate waiver. And that would include not only your right to appeal -- you would have a right to appeal an illegal sentence obviously, but you don't have a right to appeal anything else in connection with this matter. And also it's precluding you from what we call collaterally attacking your conviction, that is, trying to get it set aside for some other reason later on after you've been, you know, sentenced. So, do you understand what that's all about?

MR. PRESZLER: Yes, sir.

THE COURT: And any others that you want me to look at?

MR. MICHAELSEN: No, Your Honor.

THE COURT: Okay. Now, this is a pretty lengthy document and I know it's been written fairly clearly. But anything in that that you don't understand?

MR. PRESZLER: No, sir.

THE COURT: Is everything you've been promised contained within the four corners of this 19-page document?

MR. PRESZLER: Yes, sir.

THE COURT: Has anyone made any other promises to you?

MR. PRESZLER: No, sir.

THE COURT: Has anyone made any threats to you or your family members to get you to come in here and plead guilty?

MR. PRESZLER: No, sir.

THE COURT: Now, tell me about your relationship with your counsel. We've talked about how there's an apparent potential for a conflict here. Have you been satisfied with is performance here?

MR. PRESZLER: Yes, sir.

THE COURT: Is there anything that he's done in your case that you haven't wanted him to do?

MR. PRESZLER: No, sir.

THE COURT: Is there anything that he's failed to do for you that you've asked him to do?

MR. PRESZLER: No, sir.

THE COURT: And with regard to your age, how old are you?

MR. PRESZLER: I'm 63.

THE COURT: And how far have you gone in school?

MR. PRESZLER: Twelfth grade.

THE COURT: And no problems reading, writing or understanding English, correct?

MR. PRESZLER: No, sir.

THE COURT: And with regard to your mental health and your physical health, any problems today physically or mentally that I should know about that would affect your ability to plead guilty today?

MR. PRESZLER: No, sir.

THE COURT: Anything about substances, be it alcohol or, you know, sometimes we're on prescription drugs that affect us and anything like that that would be of concern to you?

MR. PRESZLER: No, sir.

THE COURT: So, you think you're clear-minded today and able to make a smart decision?

MR. PRESZLER: Yes, sir.

THE COURT: Okay. Then I'm going to ask you, just as I did with your wife, before I turn to your lawyer and ask for the plea on Count Twenty-One, anything that you want to ask me? Any issue you want to bring up that's been gnawing at you that nobody has covered with you and nobody has answered before you do this plea?

MR. PRESZLER: No, sir.

THE COURT: Okay. Then, counsel, what's the plea?

MR. LYNCH: Your Honor, Mr. Preszler will plead guilty to Count Twenty-One of the Superseding Indictment.

THE COURT: Your plea is guilty under this Plea Bargain arrangement, correct?

MR. PRESZLER: Yes.

THE COURT: Okay. We'll accept that plea and put it in the record here at the District Court. I'll order a Presentence Investigation. And similarly, it'll be about six or eight weeks or maybe longer to get this thing done and then you'll be set up for sentencing. I think I've covered everything but I fear that I may have overlooked something. Mr. Michaelsen?

MR. MICHAELSEN: Nothing further on behalf of the Government, Your Honor.

THE COURT: Anything else on behalf of the defense?

MR. LYNCH: No, Your Honor. Thank you.

THE COURT: All right. I'm going to leave the bond paper up here or did you pick it up already?

MR. LYNCH: Your Honor, I have it and I'm almost done reviewing the conditions and I'll have them sign it.

THE COURT: Okay. All right. Good. Thank you all very much. Have a good day.

MR. LYNCH: Thank you, Your Honor.

(Court Adjourned at 11:21 a.m.)

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceeding in the above-entitled matter.

/s/ Lissa C. Whittaker — February 14, 2014

Signature of transcriber — Date